APPENDIX

APPENDIX A

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1974
THURSDAY, JANUARY 10, 1974

CASE NO. 44,073

GEORGE P. DONALDSON, JR.,
Petitioner,

vs.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Respondent.

On consideration of the Petition for Rehearing filed by attorneys for petitioner and the reply thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

CARLTON, C.J., ROBERTS, ADKINS and BOYD, JJ., concur

ERVIN, McCAIN and DEKLE, JJ., dissent

Y

CC: Devitt, Geiger, O'Neal & Booth
(Hon. James W. Geiger)
Hon. Hugh S. Glickstein
Hon. E. J. Comiskey, Clerk
Hon. Clyde L. Heath, Clerk
Hon. Lamar Warren, Judge

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: /s/ Kay O. Yost

Deputy Clerk

APPENDIX B

[TITLE OMITTED]

PETITION FOR REHEARING

GEORGE P. DONALDSON, JR., Petitioner in the above-styled cause respectfully petitions this Court to set aside and withdraw its Decision dated October 11, 1973, wherein Petition for Writ of Certiorari was denied, and to rehear this cause on the following grounds:

1. Petitioner has heretofore filed its Assignments of Error in the Fourth District Court of Appeal appealing the decision of the Circuit Court of the Seventeenth Judicial Circuit, Broward County, Florida, wherein the questions presented to the Circuit Court, on certiorari from an administrative body included:

A. DONALDSON'S right to a fair and impartial hearing.

B. His right to due process and equal protection of the law in the political atmosphere and makeup of the hearing body, and

C. High right of cross examination and confrontation of his accuser.

2. The Trial Court was called upon and did rule on same, in entering its Final Judgment denying the Petitioner's Petition for Certiorari.

3. Petitioner thereafter filed his Assignments of Error in the Fourth District Court of Appeal, assigning as specific errors committed by the Trial Court:

A. The denial of due process of law in the administratrive proceedings before the PLANTATION CITY COUNCIL and the PLANTATION Municipal Court, and

B. The denial of due process to Petitioner in that there had been a departure from essential elements of the law in the administrative procedings before the PLANTATION CITY COUNCIL and the PLANTATION Municipal Court.

4. The Fourth District Court of Appeal ruled directly thereon in granting the Motion to Quash or Dismiss the Appeal.

5. Petitioner in this cause would respectfully submit to the Court that this Court has jurisdiction of this cause on the constitutional grounds heretofore stated, and that it constitutes a denial of due process of law, and a denial of equal protection of the law to deny DONALDSON his right of appeal (see Article V, Section 4(b) Jurisdiction, and Article V, Section 3(b) Jurisdiction, Constitution of the State of Florida).

6. Petitioner further submits that where the constitutional question was raised on appeal by Assignment of Error as to whether DONALDSON had been denied due process and equal protection of the law as heretofore stated, if the District Court of Appeal lacked jurisdiction, then the appeal should be transferred to the Florida Supreme Court (see Banores v Austin, App., 240 So.2d

850 (1970), transferred to 240 So.2d 648, and Franklin v State, App., 243 So.2d 440 (1971), transferred to 257 So.2d 21).

7. This Court has heretofore held that per curiam judgments, without opinion, are to be given the same "veriety" that is given Appeal Court decisions supported by an opinion. By subjecting such per curiam decision to the same scrutiny on the "proper record," that is the written record of the proceedings in the Court under review, excluding testimony, it may be concluding that a direct conflict exists, or such scrutiny may show "the probable existence of a direct conflict between the two decisions." This question may be definitely determined only by remanding the cause to the Appellant Court with the request that a supporting opinion be written. (Foley v Weaver Drugs, Inc., Fla., 177 So.2d 221). This Court in the Foley case stated that the jurisprudence of the State of Florida would best be served by modifying the policy announced in Lake v Lake, 103 So.2d 639. It is noted that Lake v Lake was a case relying heavily upon the respondent in the District Court of Appeal and was cited before this Honorable Court.

The nature of the order of dismissal entered by the District Court of Appeal is final in its result, and in its obscurity as the reasons therefor, just as a per curiam decision is final and obscure in its reasons. The possible erroneous and repugnancy to evenhanded administration justice mentioned in Seaboard Air Line Railroad Company v William, Fla., 199 So.2d 469, as well as the Foley case, supra, could be eliminated by this Honorable Court, pursuant to this Petition for Rehearing, remanding this cause

to the District Court of Appeal with the request that a supporting opinion be written.

WHEREFORE Petitioner respectfully petitions and prays this Court to reconsider this cause, withdraw its decision denying certiorari, and to take jurisdiction of this cause, or in the alternative to remand this cause to the Fourth District Court of Appeal, or both, requesting that the Fourth District Court of Appeal assist this Court by preparing and adopting an opinion setting forth the theory and reasoning upon which their dismissal was based, or to transfer the cause to the Supreme Court on constitutional grounds.

Respectfully submitted

/s/ James W. Geiger

JAMES W. GEIGER
DEVITT, GEIGER, O'NEAL
& BOOTH
Attorneys for Petitioner
2900 East Oakland Park Boulevard
P. O. Drawer 11088
Fort Lauderdale, Florida 33306
565-9541

I HEREBY CERTIFY that a copy of the foregoing Petition for Rehearing was mailed to HUGH S. GLICKSTEIN, Attorney for City Council, City of Plantation, Florida, Respondent, 2138 Hollywood Boulevard, Hollywood, Florida, this 25th day of October, 1973.

/s/ James W. Geiger

JAMES W. GEIGER

APPENDIX C

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1973

Thursday, October 11, 1973

Case No. 44,073

DISTRICT COURT OF APPEAL,
FOURTH DISTRICT 73-296

GEORGE P. DONALDSON, JR.
Petitioner,

vs.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

CARLTON, C.J., ROBERTS, ADKINS and BOYD, JJ., concur

ERVIN, McCAIN and DEKLE, JJ., dissent

Y

CC: Hon. E. J. Comiskey, Clerk
Hon. Clyde L. Heath, Clerk
Hon. Lamar Warren, Judge,
Devitt, Geiger, O'Neal & Booth
(Hon. James W. Geiger)
Hon. Hugh S. Glickstein

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: /s/ Kay O. Yost

Deputy Clerk

APPENDIX D

[TITLE OMITTED]

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT OF FLORIDA

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner presents this its Petition for Writ of Certiorari and states:

1. Petitioner seeks to have reviewed an Order of the District Court of Appeal, Fourth District of Florida, dated June 25, 1973, filed on the same date in Minute Book 12, at Page 55.

2. This Petition is presented pursuant to Article V, Section 4 of the Florida Constitution and Rule 4.5 c. of the Florida Appellate Rules.

3. Accompanying this Petition are conformed copies of so much of the records of the proceedings, including the decision, that the Petitioner seeks to have reviewed, as is necessary to show jurisdiction in this Court and a Brief in support of jurisdiction.

4. The facts in the case are as follows:

(a) On or about November 21, 1968, the Respondent, (hereinafter referred to as CITY OF PLANTATION) served upon Petitioner (hereinafter referred to as DON-

ALDSON) a notice alleging certain building violations of the CITY OF PLANTATION Ordinances based upon the complaint of C. DOUGLAS RICE, the Chief Building Inspector of the City. (Exhibit 4) Thereafter, an administration hearing was held and testimony was taken before the CITY COUNCIL, pursuant to a CITY COUNCIL Ordinance No. 188 that provided as follows:

> "The CITY COUNCIL of the CITY OF PLANTATION shall have jurisdiction over all matters pertaining to qualification and disciplinary action of any building contractor; . . . "

(b) On February 3, 1969, DONALDSON'S Certificate of Competency was ordered suspended for fifteen (15) days. (Exhibit 5) Thereafter, DONALDSON proceeded to exhaust his administrative remedies as required by the CITY, and sought administrative review before the City Judge of the PLANTATION Municipal Court. The City Judge heard the matter on February 1, 1970, and on October 7, 1970, he affirmed the decision of his CITY COUNCIL. (Exhibit 6)

(c) Thereafter, in an abundance of caution, DONALDSON filed Petitions for Certiorari and Notices of Appeal to the Broward Circuit Court and to the Fourth District Court of Appeal. It was ultimately determined that the proper remedy and form was certiorari in the Circuit Court to review the administrative decision of the CITY OF PLANTATION, and all other proceedings were dismissed. (Exhibits 7, 8, 9, and 10)

(d) The Hearing on Certiorari in the Circuit Court took place on June 17, 1971, and on February 8, 1973, the

lower Court denied the Petition for Certiorari (Exhibit 11). DONALDSON filed his Notice of Appeal before the District Court of Appeal, Fourth District, on March 8, 1973, (Exhibit 1), and Asignments of Error, (Exhibit 2).

(e) The CITY OF PLANTATION on March 30, 1973, filed its Motion to Dismiss or Quash the Appeal. Exhibit 3) After setting forth the chronology of certain steps taken in the case, the Respondent in Paragraph 11 of the Motion stated,

> "That this Court lacks jurisdiction to hear the present appeal in view of the judicial review of the administrative record by the Municipal Court of the City of Plantation on Appeal and by the Circuit Court by Petition for Writ of Certiorari."

Paragraph 12 of the Motion stated,

> That the record having been judicially reviewed by two other Courts, a third review by this Court, is no more than a frivolous appeal and a violation of the Supreme Court's admonition in Lake v. Lake, Fla. 1958, 103 So.2d 639 . . ."

(f) The Fourth District Court entered its Order on April 17, 1973, granting the CITY OF PLANTATION'S Motion for Dismissal, and thereby dismissing Petitioner's Appeal. (Exhibit 12)

(g) On April 26, 1973, DONALDSON filed his Motion for Rehearing and Reinstatement of Appeal, (Exhibit 13), citing Article V, Section 5 and Section 6 of the Florida Constitution, alleging that by provisions of the Con-

stitution, a Municipal Court has no appeal jurisdiction, therefore the Municipal Court's only involvement in the cause was as part of the administrative procedure set up by the CITY COUNCIL to review the CITY COUNCIL'S administrative action. Thereafter, Petitioner having exhausted his administrative remedies, the Petitioner's case was considered by the Circuit Court under its Constitutional original jurisdiction to issue the extraordinary Writ of Certiorari. In the exercise of that Constitutional original jurisdiction, the proceedings did not appear in the Judicial Department of the State Government as a judicial "case" until brought to the Circuit Court, and that under Article V, Section 5 of the Florida Constitution, the Petitioner had an appeal to the District Court of Appeal, as a matter of right from the Final Judgment of the Broward County Circuit Court denying Certiorari.

(h) On April 30, 1973, the CITY OF PLANTATION filed its reply to the Petition for Rehearing and Reinstatement of Appeal, restating the CITY'S position as set forth in the Motion to Dismiss. (Exhibit 14)

(i) On May 23, 1973, the Fourth District Court of Appeal entered its Order vacating its prior April 17, 1973 Order, and setting Respondent's Motion to Dismiss filed April 2, 1973, for oral argument. (Exhibit 15)

(j) On June 25, 1973, and after oral argument, the Fourth District Court entered its Order granting the CITY OF PLANTATION'S Motion, and dismissing DONALDSON'S appeal. (Exhibit 16)

5. On the foregoing facts, the District Court of Appeal was presented with the following point of law:

IS GEORGE DONALDSON ENTITLED TO APPEAL BEFORE THE FOURTH DISTRICT COURT OF APPEAL AFTER AN ADVERSE ADMINISTRATIVE HEARING BEFORE THE CITY COUNCIL OF THE CITY OF PLANTATION, AND THE REVIEW THEREOF BY THE CITY JUDGE OF THE CITY OF PLANTATION, AND AFTER SUBSEQUENT PETITION AND DENIAL OF CERTIORARI IN THE CIRCUIT COURT.

The District Court by granting the CITY OF PLANTATION'S Motion to Dismiss decided the question negatively.

6. The same point of law was involved in State vs. Furen, (Fla. 1960 118 So.2d 6, decided by the Supreme Court on February 5, 1960; in that case the Supreme Court reviewed an administrative matter that originated in a proceeding before the Pinellas County Water and Navigation Authority. A Petition for Rehearing was denied, and on appeal was taken to the Pinellas Circuit Court, which Court affirmed the decision of the administrative authority. From the Order of the Circuit Court, an appeal was taken to the Second District Court of Appeal; on consideration of a Motion to Dismiss, the Second District ruled that it did not have the authority to entertain the appeal as such, but that it could and would treat it as a Petition for Certiorari. The basis for the holding of the Second District Court of Appeal was that the Circuit Court was sitting in its appellate capacity, and that the District Court had no jurisdiction of an appeal from the Circuit Court acting in such capacity.

The Supreme Court in reviewing the Second District Court of Appeal said,

> "This Court has repeatedly held that where statutory administrative proceedings are had before administrator officers, boards, commissions or other tribunals, with statutory appeals to the Circuit Court, such proceedings do not appear in the Judicial Department of the State Government as a judicial 'case' until they are brought to the Circuit Court by appeal; therefore, the 'case' must be fairly regarded as originating in the Circuit Court through a statutory appeal from the administrative board as much as it would be so originating in the Circuit Court by injunction, certiorari or other original writ." (Emphasis added)

7. The decision of the District Court of Appeal, Fourth District of Florida, which Petitioner seeks to have reviewed, is in direct conflict with the above mentioned decision of the Supreme Court. Because of the reasons and authorities set forth in Petitioner's Brief, it is believed that the decision of the Fourth District dismissing Petitioner's Appeal, which is sought to be reviewed, was erroneous and the decision of the Supreme Court is correct and should be reinstated by this Court as the controlling law of the State of Florida.

WHEREFORE Petitioner requests of this Court to grant a Writ of Certiorari and enter its Order quashing the decision and order sought to be reviewed and approving the decision of the Supreme Court as correct in

granting such other and further relief as shall seem right and proper to this Court.

DEVITT, GEIGER, O'NEAL & BOOTH P.A.
Attorneys for Petitioner
2900 East Oakland Park Boulevard
Post Office Drawer 11088
Fort Lauderdale, Florida 33306
Telephone: 565-9541

By /s/ James W. Geiger
JAMES W. GEIGER

I HEREBY CERTIFY that a copy of the foregoing Petition for Writ of Certiorari to the District Court of Appeal, Fourth District of Florida was mailed to HUGH S. GLICKSTEIN, Attorney for City Council, City of Plantation, Florida, Respondent, 2138 Hollywood Boulevard, Hollywood, Florida, and to the Clerk of the Fourth District Court of Appeal, Post Office Box A, West Palm Beach, Florida, this 10th day of July, 1973.

By /s/ James W. Geiger
JAMES W. GEIGER

[TITLE OMITTED]

Appendix to Petition for Writ of Ceritorari

I HEREBY CERTIFY that a copy of the attached Appendix to the Petition for Writ of Certiorari was mailed to HUGH S. GLICKSTEIN, Attorney for City Council, City of Plantation, Florida, Respondent, 2138 Hollywood Boulevard, Hollywood, Florida, this 10th day of July, 1973.

DEVITT, GEIGER, O'NEAL & BOOTH P.A.
Attorneys for Petitioner
2900 East Oakland Park Boulevard
P.O. Drawer 11088
Fort Lauderdale, Florida 33306
Telephone No. 565-9541

By /s/ James W. Geiger
JAMES W. GEIGER

Petitioner's Exhibit 1

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

No. 70-8665 J. Warren

GEORGE P. DONALDSON, JR.
CERTIFICATE OF COMPETENCY
NO. 68-873,

Petitioner,

vs.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,

Respondent.

NOTICE OF APPEAL

GEORGE P. DONALDSON, JR., Petitioner, takes and enters his appeal to the District Court of Appeal, Fourth District, to review the Order of the Circuit Court for Broward County denying Certiorari, bearing date the 8th day of February, 1973, and rendered and recorded in Circuit Court Minute Book 274, at Page 378 on February 8, 1973. The nature of the Order appealed from is a Final Order in favor of Respondent, denying Petitioner's Petition for Certiorari. All parties to said cause are called upon to take notice of this appeal.

GEIGER, O'NEAL & BOOTH P.A.
Attorneys for Petitioner
2900 East Oakland Park Blvd.
P.O. Drawer 11088
Fort Lauderdale, Florida
565-9541

By /s/ James W. Geiger

JAMES W. GEIGER

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed to HUGH S. GLICKSTEIN, Attorney for the City of Plantation, City Council, Respondent, 2138 Hollywood Boulevard, Hollywood, Florida, this 3 day of March, 1973.

/s/ James W. Geiger

JAMES W. GEIGER

Petitioner's Exhibit 2

[TITLE OMITTED]

ASSIGNMENTS OF ERROR

Petitioner assigns and designates as errors the following judicial acts in the lower court:

1. The Court erred in denying Petitioner's Petition For Certiorari.

2. The Court erred by failing to determine that the Petitioner had been denied due process of law in the administrative proceedings before Plantation City Council and the Plantation Municipal Court.

3. The Court erred in failing to determine that there had been a departure from essential elements of the law in the administrative proceedings before the Plantation City Council and the Plantation Municipal Court.

4. The Court erred in failing to determine that there was an absence of substantial competent evidence to support the charges in the administrative proceedings before the Plantation City Council and the Plantation Municipal Court.

I HEREBY CERTIFY that a copy of the foregoing Assignments of Error was mailed to HUGH S. GLICKSTEIN, Attorney for the City of Plantation, City Council,

Respondent, 2138 Hollywood Boulevard, Hollywood, Florida, this 19 day of March, 1973.

GEIGER, O'NEAL & BOOTH P.A.
Attorneys for Petitioner
2900 East Oakland Park Blvd.
P. O. Drawer 11088
Fort Lauderdale, Florida
565-9541

By /s/ James W. Geiger

JAMES W. GEIGER

Petitioner's Exhibit 3

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

CASE NO. 73-296

GEORGE P. DONALDSON, JR.,
CERTIFICATE OF COMPETENCY #68-873,
Appellant,

vs.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Appellee.

MOTION TO DISMISS OR QUASH APPEAL

The Appellee, CITY COUNCIL, CITY OF PLANTATION, FLORIDA, moves to dismiss or quash the Appeal filed herein upon the grounds that it is a frivolous appeal and that the Court lacks jurisdiction. The Appellee would show the following:

1. That on November 21, 1968, the Appellee served upon the Appellant a Notice, a true copy of which is attached hereto as Exhibit A and by reference made a part hereof.

2. That on February 3, 1969, the Appellee, upon the conclusion of administrative hearings with respect to said Notice, suspended the Certificate of Competency of the Appellant for a period of fifteen (15) days; and that a certified copy of said decision is attached hereto as Exhibit B and by reference made a part hereof.

3. That on February 24, 1969, the Appellant sought a rehearing before the Appellee, which Motion was denied on March 24, 1969.

4. That the Appellant appealed the aforesaid decision in the Municipal Court of the City of Plantation.

5. That on October 7, 1970, the Municipal Court affirmed the City Council; and that a certified copy of the Court's decision is attached hereto as Exhibit C and by reference made a part hereof.

6. That the Appellant then filed a Notice of Appeal to this Court, which was dismissed, a copy of which Order is attached hereto as Exhibit D and by reference made a part hereof.

7. That the Appellant simultaneously filed a Petition for Writ of Certiorari in this Court, which was dismissed, a copy of which Order is attached hereto as Exhibit E and by reference made a part hereof.

8. That the Appellant simultaneously filed a Notice of Appeal to the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, which was dismissed, a copy of which Orders are attached hereto as Exhibit F and by reference made a part hereof.

9. That the Appellant simultaneously filed in said Circuit Court a Petition for Writ of Certiorari; and that the Circuit Court found it had jurisdiction, reviewed the record and on February 8, 1973 denied Certiorari, a certi-

fied copy of which Order is attached hereto as Exhibit G and by reference made a part hereof.

10. That the Appellant then filed his present Notice of Appeal in this Court.

11. That this Court lacks jurisdiction to hear the present appeal in view of the judicial review of the administrative record by the Municipal Court of the City of Plantation on Appeal and by the Circuit Court by Petition for Writ of Certiorari.

12. That the record having been judicially reviewed by two other Courts, a third review by this Court is no more than a frivolous appeal and a violation of the Supreme Court's admonition in Lake v. Lake, Fla. 1958, 103 So. 2d 639, 642:

"It seems trite to remark that everyone concerned wishes to see justice done. It can be stated without hesitancy, qualification, or reservation, that every man is entitled to his day in court. He is vouchsafed a fair trial and he is secured a fair hearing on an appeal which he may take as a matter of right. But he is not entitled to two appeals.

"The quality of justice may not be gauged by the treatment accorded one litigant without regard for his adversary. Justice should be done, but not overdone. When a party wins in the trial court he must be prepared to face his opponent in the appellate court, but if he succeeds

there, he should not be compelled the second time to undergo the expense and delay of another review . . . . "

/s/ Hugh S. Glickstein

HUGH S. GLICKSTEIN
Attorney for Appellee
2138 Hollywood Boulevard
Hollywood, Florida 33020
Tel: 922-3538

I HEREBY CERTIFY that a copy of the foregoing Motion to Dismiss or Quash Appeal was mailed to JAMES W. GEIGER, GEIGER, O'NEAL & BOOTH, P.A., Attorneys for Appellant, 2900 East Oakland Park Blvd., P.O. Drawer 11088, Fort Lauderdale, Florida this 30th day of March, 1973.

/s/ Hugh S. Glickstein

HUGH S. GLICKSTEIN

EXHIBIT A

Petitioner's Exhibit 4

November 21, 1968

NOTICE

FROM: City Council
City of Plantation, Florida

TO: George Donaldson, Jr., Certificate of Competency No. 68-873
1701 Wlngate Road
Fort Lauderdale, Florida

YOU ARE HEREBY NOTIFIED, pursuant to Section 6-34 (H) (7) (d) (2) a., Code of Ordinances, and Ordinance #188 of the City of Plantation, that upon the complaint of C. Douglas Rice, as Chief Building Inspector, City of Plantation, you did:

1. Allegedly disregard and violate, in the performance of your contracting business in said City, the Building Code and Ordinances of the City of Plantation, Florida, on a continuing basis, from on or about January 1, 1968, to on or about October 14, 1968, in violation of Section 6-35 e), Code of Ordinances, City of Plantation. Specifically, you allegedly:

A. Failed to provide competent supervision so that said Building Code has been regularly violated in the following phases of construction, to-wit: fill, concrete and steel.

B. Regularly failed inspections conducted by the Building Department of said City for the purpose of requiring compliance with said Code.

2. Allegedly use unlicensed sub-contractors in the period of June 1, 1968, to on or about October 14, 1968, in violation of Section 6-35(h), Code of Ordinances, City of Plantation.

YOU ARE FURTHER NOTIFIED that you are to appear before the City Council, City of Plantation, in person, with or without counsel, at the meeting room of said Council, City Hall, 7051 N.W. 4th Street, Plantation, Florida, on December 11, 1968, at 7:00 P.M. to show cause why your Certificate of Competency should not be suspended or revoked.

Beatrice G. Browning, City Clerk
By Direction of the City Council
City of Plantation, Florida

[1340]

EXHIBIT B

Petitioner's Exhibit 5

SPECIAL CITY COUNCIL MEETING
OF THE CITY OF PLANTATION, FLORIDA
HELD AT
PLANTATION CITY HALL
ON
FEBRUARY 3, 1969
AT
10:00 O'CLOCK P.M.
IN RE:
GEORGE DONALDSON, JR.

APPEARANCES:

COUNCILMAN: FRANK VELTRI
CITY ATTORNEY: JAMES J. LINUS
CHAIRMAN: W. P. FREEMAN
COUNCILMAN: JOHN B. DYE, JR.
COUNCILMAN: JOHN F. SPELLACY
COUNCILMAN: JACK P. LaMARR

HUGH S. GLICKSTEIN, ESQ.,
Appearing on behalf of the City.

JAMES W. GEIGER, ESQ.,

Appearing on behalf of George
Donaldson, Jr.

TRANSCRIPT OF PROCEEDINGS

[1341] Thereupon the following proceedings were had:

MR. FREEMAN: The special meeting is now resumed to reach a decision.

Mr. Linus, do you want to explain the pertinent points of law to us?

MR. LINUS: Briefly, all I will refer to is the ordinance itself and it provides that a decision shall be made by a majority of the entire board within five days after the closing of the hearing and it states that the decision shall be one of the following; not guilty, suspension of certificate of competency, stating time, revocation of certificate of competency naming effective date and in construing the whole ordinance, that would mean any thin line between those two points within the discretion of the Board.

MR. FREEMAN: Is the burden of proof on the defense or the prosecution?

MR. LINUS: It is on the prosecution, but it is a burden of preponderance of evidence.

MR. LaMARR: May I ask the City Attorney a question in regard to ordinance [1342] 635, read the two sections involved.

MR. LINUS: Relate that to the Court.

MR. LaMARR: 635 H and E.

MR. LINUS: All right. Section E.

MR. LaMARR: E is one, H is the other.

MR. LINUS: Part of the charge against the contractor included disregard or violate in the performance of his contracting business.

MR. LaMARR: Disregard or violate?

MR. LINUS: Yes, any of the building, safety, health, insurance or workmen's compensation laws of the State of Florida or ordinances of this City and H, subparagraph H, and these are both subparagraphs of section 635 of the code of the ordinances of the City of Plantation, continuing H states, aid or abet an unlicensed person to evade the provisions of this article or allow his license to be used by an unlicensed person or to act as an agent, partner or associate of an unlicensed person with the intent to evade the provisions of this article.

MR. FREEMAN: Thank you, Mr. Linus. [1343] Are there any other questions the members of the Board want clarified?

MR. SPELLACY: I would like to make a motion at this time. I move that the certificate of competency issued to George Donaldson be suspended for a period of 15 days commencing on March 15, 1969.

MR. LaMARR: May I inquire of the motion made. Is it my understanding that according to Mr. Spellacy's motion that Mr. Donaldson's certificate of competency be suspended for 15 days commencing on March 15th?

MR. SPELLACY: That is correct.

MR. LaMARR: That suspension would be for 15 days and his certificate of competency would be restored after that period of time?

MR. SPELLACY: That is correct.

MR. FREEMAN: During that period of time he would be able to qualify some other superintendent.

MR. DYE: He could qualify somebody else during this period of time?

MR. SPELLACY: I assume he could.

[1344] That is what Mr. Miller did, I believe.

MR. DYE: Based on that I will second the motion.

MR. FREEMAN: Any further discussions, gentlemen? If not, we will call for a roll call.

MRS. BROWNING: Mr. Dye?

MR. DYE: Yes.

MRS. BROWNING: Mr. LaMarr?

MR. LaMARR: Yes.

MRS. BROWNING: Mr. Spellacy?

MR. SPELLACY: Yes.

MRS. BROWNING: Mr. Veltri?

MR. VELTRI: Yes.

MRS. BROWNING: Mr. Freeman?

MR. FREEMAN: Yes.

So ordered.

[Thereupon the hearing was concluded.]

[1345]

CERTIFICATE

STATE OF FLORIDA :
: SS
COUNTY OF BROWARD :

I, PATRICIA A. YOUNG, a Court Reporter and Notary Public duly commissioned and qualified in and for the State of Florida at Large, do hereby certify that the foregoing transcript, pages 1 to and including 1344, is a true and correct transcription of my stenographic notes of the proceedings had at the Special City Council Meeting of The City of Plantation, Florida, in re: GEORGE DONALDSON, JR., held at the Plantation City Hall, Plantation, Florida, on January 9, 1969, January

10, 1969, January 13, 1969, January 14, 1969, January 18, 1969, January 22, 1969, January 28, 1969, January 29, 1969, and February 3, 1969.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which these proceedings were had, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official notarial seal this 16th day of July, 1969.

/s/ Patricia A. Young

PATRICIA A. YOUNG
Notary Public State of Florida at Large. My Commission Expires September 19, 1969.

EXHIBIT C

Petitioner's Exhibit 6

IN THE MUNICIPAL COURT
IN AND FOR THE CITY OF PLANTATION,
BROWARD COUNTY, FLORIDA.

GEORGE P. DONALDSON, JR.,
CERTIFICATE OF COMPETENCY
NO. 68-873

Appellant,

vs.

CITY COUNCIL, CITY OF
PLANTATION, FLORIDA,

Appellee.

Geiger, O'Neal, Booth & Merritt,
for Appellant.

Hugh S. Glickstein,
for Appellee.

I HEREBY CERTIFY that the aforegoing is a true and correct copy of the original document.

SCHMUNK, FRED, JUDGE.

On November 21, 1968, Appellee delivered to Appellant a Notice, alleging that Appellant, a building contractor, had disregarded and violated the Building Code and Ordinances of the City in violation of Section 6-35(e) of

the City's Code of Ordinances, and had used unlicensed sub-contractors in violation of Section 6-35(h) of said Code.

Thereafter, over the course of several weeks ,considerable testimony was taken and documentary evidence received by the City Council, which was exercising its jurisdiction pursuant to Ordinance No. 188 of said City.

On February 3, 1969, the City Council, at the conclusion of the testimony and argument, suspended the Certificate of Competency issued to the Appellant for a period of fifteen (15) days, commencing March 15, 1969.

From that decision Appellant took the present appeal.

The Court has considered all of the matters raised by both parties in their briefs and oral argument and has examined the voluminous record in this cause.

Furthermore, the Court feels compelled to note the admonition of Judge Wiggington, in State v. Green, Fla. 1958, 105 So.2d 817, 819, wherein he said:

> "An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered."

As to the allegations raised in the Appellee's Notice of November 21, 1968, the Court does not consider its function to substitute its judgment for that of the body which received the evidence and reached conclusions therefrom. Great Atlantic & Pacific Tea Company v. Stephens, Fla. App. 1967, 201 So.2d 466. On the other hand, the Court has reviewed all of the evidence and finds that there is substantial, competent evidence to sustain the decision of the City Council. By "substantial evidence", the Court means such evidence that a reasonable man would accept as adequate to support a conclusion. Florida Industrial Commission v. Nordin, Fla. App. 1958, 101 So.2d 890. The Court is of the opinion that the record contains such evidence with respect to all of the allegations contained in the aforesaid Nctice.

Without outlining the lengthy evidence upon both issues, the Court will briefly review the evidence upon both matters presented to the City Council.

The first matter was that of the Appellant's violations "on a continuing basis." The City Council received evidence from Kenneth Nordine, Joseph L. Murff, Clair Brenon, James Ruggiero, and Joseph G. Scevola, all of whom were or had been inspectors for the City and had observed the practices of the Appellant over the lengthy period involved. In addition, Martin J. Yohalem, a consulting engineer, and Paul Broadigin, assistant chief structural inspector for the City of Fort Lauderdale, appeared as expert witnesses. Other building superintendents, James Dunbar and James Atwell, supported the City's contentions.

While the Appellant presented several witnesses in his own behalf in an effort to deny or refute the testimony presented by the City, there was substantial, competent evidence to support the conclusion of the City Council that the matters raised in the aforesaid Notice of November 21, 1968, had been proven.

The second matter was the assistance of the Appellant to allegedly unlicensed persons. Again, the Court concludes that the evidence presented by the City, both documentary as well as that of the witnesses, Antonia Hubert, Douglas Rice and James J. Ruggiero, was sufficient, as a matter of law.

Equally important to the foregoing consideration of the evidence is the necessity that the Appellant's rights be protected in proceedings such as were conducted below. The Court has given attention to each of the specific questions raised by the Appellant in the Court's review of the record to determine if there are basic, jurisdictional or Constitutional flaws or other error which would vitiate or taint the proceedings. The Court finds none.

The cause sub judice reflects both disclosure to the Appellant of the evidence to be offered by the Appellee and specific allegations which created the issues. Hickey v. Wells, Fla. 1956, 91 So.2d 206, 209, states:

> "While due process requires a procedure for disclosure, for example, or else specific accusation, it does not require both."

The Appellant filed no Motion for More Definite Statement below as a predicate for his present position

that he could not respond intelligently to the notice he received. Moreover, the record does reflect an exchange between the parties of all of the documentary evidence.

The Notice was definite, stating:

"YOU ARE HEREBY NOTIFIED, pursuant to Section 6-34(H)(7)(d)(2)a., Code of Ordinances, and #188 of the City of Plantation, that upon the complaint of G. Douglas Rice, as Chief Building Inspector, City of Plantation, you did:

1. Allegedly disregard and violate, in the performance of your contracting business in said City, the Building Code and Ordinances of the City of Plantation, Florida, on a continuing basis, from on or about January 1, 1968, to on or about October 14, 1968, in violation of Section 6-35(e), Code of Ordinances, City of Plantation. Specifically, you allegedly:

A. Failed to provide competent supervision so that said Building Code has been regularly violated in the following phases of construction, to-wit: fill, concrete and steel.

B. Regularly failed inspections conducted by the Building Department of said City for the purpose of requiring compliance with said Code.

2. Allegedly use unlicensed sub-contractors in the period of June 1, 1968, to on or about October 14, 1968, in violation of Section 6-35(h), Code of Ordinances, City of Plantation."

As for the language of the Notice, the record reflects no motion to dismiss, which would have attacked the absence of any allegations of "wilfulness" in the Notice; nor does the Motion for New Trial make mention of such alleged deficiency; nor do the Assignments of Error, notwithstanding Assignments Nos. 6 and 7. Sections of the Code which the Appellant allegedly violated were Sections 6-35(e) and (h) of the City's Code of Ordinances. Section 6-35(e) provides:

> "Disregard or violate, in the performance of his contracting business, any of the building, safety, health insurance or Workmen's Compensation Laws of the State of Florida or ordinances of this city."

Section 6-35(h) provides:

> "Aid or abet an unlicensed person to evade the provisions of this articls or allow his license to be used by an unlicensed person or to act as an agent, partner, or associate of an unlicensed person with the intent to evale the provisions of this article."

The language of the Notice speaks for itself. The word "disregard" is akin to the word "neglect," neither of which compels "wilful design," as argued by Appellant. Furthermore, "aid" is akin to "assistance" or "support" or "help", none of which contemplate wilful design.

Accordingly, the Court considers that the Notice was not defective to the Appellant upon the ground that there was an absence of allegations of wilfulness.

If Appellant complains of error in the receipt of evidence of alleged violations after October 14, 1968, this cause represents a charge of violations "on a continuing basis, from on or about January 1, 1968, to on or about October 14, 1968." There is ample authority for the admissibility of evidence of similar violations after October 14, 1968, in the civil and criminal law. Gard, Florida Evidence, Rule 103 and cases cited therein; Crosby v. State, Fla. App. 1970, 237 So.2d 286.

The Motion for New Trial filed by the Appellant alludes to the creation, after the hearing and decision below, of a board composed of men with special knowledge in the field, which newly created board should hear Appellant's case. The Motion does not question the Constitutionality of Ordinance No. 188, which provided in part:

> "The City Council of the City of Plantation shall have jurisdiction over all matters pertaining to the qualification and disciplinary action of any building contractor."

Assignment of Error No. 10 of the Appellant questions the make-up of the hearing body. Again, no attack is made upon the Ordinance; and as above stated, no motion to dismiss was filed below, attacking the Ordinance.

Regardless of whether the Appellant properly raised or reserved question for determination on appeal of the Constitutionality of Ordinance No. 188, the Court is of the opinion that Appellant has not been deprived of the equal protection of the law because of sub-contractors' disciplinary proceedings being delegated to special boards by the Council.

The City Council, in its proper exercise of the democratic process, chose not to delegate its responsibility in the handling of building or general contractors. Such retention of responsibility is not violative of a Constitutional right because the City Council chose to delegate to several boards the problems involving specified sub-contractors.

Moreover, Section 6-34(B), which discusses the make-up of the sub-contractor boards, does not absolutely require membership thereon to be representative of the trade but only requires the following:

> "The members of each board shall be proportionately representative, as nearly as possible, of the trade or trades related to the subject matter concerned in the examination and qualifications, and professions within and connected with the particular trades concerned shall be represented."
> (Emphasis Supplied).

Appellant has argued the decision was contrary to law because it made no findings of fact. Appellant has not been prejudiced in his appeal by such absence. The briefs submitted in his behalf were complete and a highly professional analysis of all of the points of law which this voluminous record occasioned.

Moreover, it is the opinion of the Court that there was no requirement on the part of the City Council to include such findings in its decision; and that the decision was in accordance with Section 6-34 of the City's Code of

Ordinances, which required that the decision be one of the following:

"1. Not guilty.

2. Suspension of certificate of competency, stating time.

3. Revocation of certificate of competency, naming effective date."

The remaining matters raised by the Appellant have been duly considered, but the Court is of the opinion that the decision reached below was the result of a lawfully conducted hearing.

Accordingly, the decision being appealed is hereby affirmed.

DONE AND ORDERED at Plantation, Florida this 7th day of October, 1970.

FRED S. SCHMUNK, JR.

MUNICIPAL JUDGE.

EXHIBIT D

Petitioner's Exhibit 7

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT JULY TERM 1970

CASE NO. 70-947.

GEORGE P. DONALDSON, JR.,
Appellant,

v.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Appellee.

December 16, 1970.

ORDERED that appellee's motion to quash, filed November 24, 1970, is hereby granted and this appeal commenced by notice filed November 6, 1970, in Case No. 68-873 of the Municipal Court for Broward County is hereby quashed.

A TRUE COPY

/s/ Evelyn R. Flack

EVELYN R. FLACK
CLERK

cc: Geiger O'Neal & Booth
Hugh S. Glickstein, Esq.
Hon. John J. Garry, Clerk

EXHIBIT E

Petitioner's Exhibit 8

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT JULY TERM 1970

CASE NO. 70-931.

GEORGE P. DONALDSON, JR.,
Certificate of Competency No. 68-873,
Petitioner,

v.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Respondent.

December 16, 1970.

ORDERED that respondent's motion to strike brief, filed November 24, 1970, is hereby moot; further,

ORDERED that respondent's motion to dismiss, filed November 24, 1970, is hereby granted and the petition for certiorari, filed November 6, 1970, is hereby dismissed.

A TRUE COPY

/s/ Evelyn R. Flack

EVELYN R. FLACK
CLERK

cc: Geiger O'Neal & Booth
Hugh S. Glickstein, Esq.

EXHIBIT F

Petitioner's Exhibit 9

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA.
CIVIL ACTION

NO. 70-8673

GEORGE P. DONALDSON, JR.
CERTIFICATE OF COMPETENCY
NO. 68-873,

Appellant,

vs.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Appellee.

[Filed February 4, 1971]

FINAL ORDER

THIS CAUSE came on to be heard upon Appellee's Motion to Quash; and the Court finds as follows:

1. That the proper remedy for review available to the Appellant was by Petition for Writ of Certiorari to the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. DeGroot vs. Sheffield, Fla. 1957, 95 So.2d 912, 916; Rule 4.5(c), Florida Appellate Rules.

2. That the Appellant herein filed a Petition for Writ of Certiorari in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Case No. 70-8665 "J" Warren; and that on January 12, 1971, the Appellant's aforesaid Petition for Writ of Certiorari was dismissed.

3. That this Court is without jurisdiction to consider this appeal in that the matter did not arise in a municipal court as contemplated by Article V, Section 6(3), 1968 Florida Constitution.

Accordingly, it is thereupon

ORDERED AND ADJUDGED that Appellee's Motion to Quash is hereby granted.

DONE AND ORDERED in Chambers at the Broward County Courthouse, Fort Lauderdale, Florida, this 4th day of February, 1971.

/s/ Arthur J. Franza

CIRCUIT JUDGE

Copies furnished counsel.

Petitioner's Exhibit 10

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA.
CIVIL ACTION

NO. 70-8673 "J" Franza

GEORGE P. DONALDSON, JR.
CERTIFICATE OF COMPETENCY
NO. 68-873,

Appellant,

vs.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,

Appellee.

[Filed March 25, 1971]

FINAL ORDER

THIS CAUSE coming on to be heard upon Appellant's Petition for Rehearing; and the Court being advised in the premises, it is thereupon

ORDERED AND ADJUDGED that Appellant's Petition be and the same is hereby denied.

DONE AND ORDERED in Chambers at the Broward County Courthouse, Fort Lauderdale, Florida this 24th day of March, 1971.

ARTHUR J. FRANZA
CIRCUIT JUDGE

Copies furnished counsel.

EXHIBIT G

Petitioner's Exhibit 11

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR BROWARD COUNTY:

NO. 70-8665 J. Warren

GEORGE P. DONALDSON, JR.
CERTIFICATE OF COMPETENCY
NO. 68-873,

Petitioner,

vs.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Respondent.

[Filed February 8, 1973]

ORDER

By petition for a writ of certiorari this court has for review a decision of the municipal court in and for the City of Plantation, Broward County, Florida. Jurisdiction is found to be in this court.

The decision of the municipal court, on a voluminous record, has been carefully examined and the court has concluded that on the record certiorari should be denied.

Certiorari denied.

ORDERED this February 8, 1973.

/s/ Lamar Warren

CIRCUIT JUDGE

cc:
James W. Geiger
Hugh S. Glickstein

Petitioner's Exhibit 12

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT JANUARY TERM 1973

CASE NO. 73-296.

GEORGE P. DONALDSON, JR.,
Appellant

v.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA,
Appellee

APRIL 17, 1973.

ORDERED that appellee's motion for dismissal of appeal filed April 2, 1973 is hereby granted, and the above-styled case commenced by the filing of a Notice of Appeal on March 9, 1973 in the Circuit Court for Broward County, Florida, in Case No. 70-8665 is hereby dismissed, and further,

ORDERED that appellee's motion for extension of time to file cross-directions to the clerk, filed April 2, 1973, is hereby determined to be moot.

A TRUE COPY

/s/ Emmett J. Comiskey

EMMETT J. COMISKEY
CLERK

cc:
Geiger O'Neal & Booth
Hugh S. Glickstein, Esq.
Hon. Clyde L. Heath, Clerk (70-8665)

Petitioner's Exhibit 13

[TITLE OMITTED]

MOTION FOR REHEARING AND REINSTATEMENT OF APPEAL

COMES NOW the Appellant, GEORGE P. DONALDSON, JR., by and through his undersigned attorney, and moves this Court for a rehearing on Appellee's Motion to Dismiss or Quash the Appeal, and for reinstatement of the Appeal, and for grounds states as follows:

1. The sole issue in Appellee's Motion to Dismiss or Quash this Appeal is a question of jurisdiction and whether or not the Appellant has an appeal from the Broward County Circuit Court to the Fourth District Court of Appeal as a matter of right.

2. On or about February 3, 1969, Appellant contractor's Certificate of Competency was ordered suspended for fifteen (15) days by the CITY OF PLANTATION CITY COUNCIL for alleged building violations. Thereafter Appellant proceeded to exhaust his administrative remedies as required by City Ordinance, and sought administrative review before the City Judge of the Plantation Municipal Court. The City Judge heard the matter on February 11, 1970, and on October 7, 1970, he affirmed the decision of his City Council.

3. Thereafter, because there was some confusion in the law as to the proper judicial review of such administrative proceedings, Appellant, in an abundance of caution, filed Petition for Certiorari and Notice of Ap-

peal in the Fourth District Court of Appeal and the Broward County Circuit Court. It was ultimately determined that the proper remedy and forum was certiorari to the Circuit Court, and accordingly all of the other proceedings were dismissed.

4. The Broward County Circuit Court heard the Petition for Certiorari on June 17, 1971 and on February 8, 1973 the said lower court denied the Petition and Appellant took this Appeal.

5. It is respectfully submitted that this Honorable Court has not considered in detail the provisions of Article V, Section 5 and Section 6, of the Florida Constitution regarding the application of those sections to the captioned case. By the provisions of the Constitution, a Municipal Court has no appeal jurisdiction, therefore the Municipal Courts only involvement in this case was as a part of the administrative procedure set up by the City Council to review the City Council's administrative action.

6. Thereafter, having exhausted his administrative remedies, the Appellant's case was considered by the Circuit Court under its constitutional original jurisdiction to issue extraordinary Writs of Certiorari. In the exercise of that constitutional original jurisdiction, the proceedings did not appear in the judicial department of the State government as a judicial "case" until brought to the Circuit Court.

7. The Circuit Court was exercising its jurisdiction under Article V, Section 6, of the Constitution to issue an original Writ of Certiorari, and not as an Appeals Court. This Honorable Court's jurisdiction to review that

original action of the trial court is expressly set forth in Article V, Section 5, which states " . . . appeals from trial courts in each appellate district . . . may be taken to the Court of Appeal of such district, as a matter of right, and from all final judgments or decrees, except those from which appeals may be taken direct to the Supreme Court or to a Circuit Court."

8. The granting of Appellee's Motion to Dismiss on the ground that this Court is without jurisdiction is unduly restrictive of this Court's jurisdiction, and contrary to the provisions of Article V, Section 5 and Section 6 of the Florida Constitution regarding Appellant's appeal as a matter of right. Appellee's allegation regarding prior appeals and prior Petition for Certiorari taken in abundance of of caution, and this Court's consideration of same have no bearing on the question of this Court's jurisdiction to hear an appeal from the Circuit Court's denial of certiorari.

9. An additional copy of Appellant's Brief in Opposition to Appellee's Motion to Dismiss, heretofore filed in the District Court of Appeal in anticipation of a forthcoming motion calendar hearing, is attached hereto for the Court's reference to case citations in support of the allegations contained in this Motion for Rehearing.

10. Appellant would respectively submit that the circumstances in this case are unique and complex, and involve a constitutional question regarding the jurisdiction of the Circuit Court and the District Court of Appeal. Accordingly Appellant respectfully requests that this Motion for Rehearing be placed on the Court's motion calendar, and that oral argument be allowed.

WHEREFORE, Appellant prays that this Court will grant this Motion for rehearing, will deny Appellee's Motion to Dismiss or Quash, and will reinstate the Appeal in the captioned cause.

I HEREBY CERTIFY that a copy of the foregoing Motion for Rehearing and Reinstatement of Appeal was mailed to HUGH S. GLICKSTEIN, Attorney for the City of Plantation, City Council, Appellee, 2138 Hollywood Boulevard, Hollywood Florida, this 26 day of April, 1973.

DEVITT, GEIGER, O'NEAL & BOOTH
Attorneys for Appellant
2900 East Oakland Park Boulevard
Post Office Drawer 10088
Fort Lauderdale, Florida 33306
Telephone: 565-9541

BY: /s/ James W. Geiger
JAMES W. GEIGER

Petitioner's Exhibit 14

[TITLE OMITTED]

REPLY TO PETITION FOR REHEARING AND REINSTATEMENT OF APPEAL

The Appellee, CITY COUNCIL, CITY OF PLANTATION, FLORIDA, by and through its undersigned attorney, files its Reply to Petition for Rehearing and Reinstatement of Appeal and says:

1. Section 6-34(7)(e) of the Code of Ordinances of the City of Plantation, adopted originally on April 14, 1960, provides:

> "(e) An appeal from the decision of the Board may be made by the contractor involved to the Municipal Court within 20 days, but not thereafter."

2. In accordance with the aforesaid Ordinance, the Appellant sought judicial review of the adverse decision of the City Council.

3. The Municipal Court's opinion recites:,

> "The Court has considered all of the matters raised by both parties in their briefs and oral argument and has examined the voluminous record in this cause."

4. The aforesaid opinion is a lengthy, articulate reflection of the Court's review of an administrative record, together with appellate briefs and the oral argument of counsel.

5. The Appellant would have this Court consider the review by the Municipal Court as part of "administrative remedies." Such is hardly the case. The Circuit Court's decision recites:

> "By petition for a writ of certiorari this court has for review a decision of the municipal court in and for the City of Plantation, Broward County, Florida. Jurisdiction is found to be in this court.
>
> The decision of the municipal court, on a voluminous record, has been carefully examined and the court has concluded that on the record certiorari should be denied.
>
> Certiorari denied."

6. Accordingly, the Appellant has been given the opportunity to have two Courts consider all of the evidence, briefs and oral arguments; and both Courts have affirmed the decision of the administrative agency. He now seeks a third judicial review of the record, contrary to the basic principle of our judicial system recited in Lake v. Lake, Fla 1958, 103 So 2d 639, 642:

> "When a party wins in the trial court he must be prepared to face his opponent in the appellate court, but if he succeeds there, he should not be

compelled the second time to undergo the expense and delay of another review. . . ."

/s/ Hugh S. Glickstein

HUGH S. GLICKSTEIN
Attorney for Appellee
2138 Hollywood Boulevard
Hollywood, Florida 33020
Tel: 922-3538

I HEREBY CERTIFY that a copy of the foregoing Reply to Petition for Rehearing and Reinstatement of Appeal was mailed to JAMES W. GEIGER, GEIGER, O'NEAL & BOOTH, P.A., Attorneys for Appellant, 2900 East Oakland Park Boulevard, P.O. Drawer 11088, Fort Lauderdale, Florida, this 3rd day of April, 1973.

/s/ Hugh S. Glickstein

HUGH S. GLICKSTEIN

Petitioner's Exhibit 15

[TITLE OMITTED]

May 23, 1973

ORDERED upon appellant's motion for re-hearing filed April 30, 1973, that the court's order of April 17, 1973 dismissing this appeal is vacated and appellee's motion to dismiss filed April 2, 1973 will be heard on oral argument at 9:00 o'clock A.M. on Monday, June 25, 1973; it is further

ORDERED that appellant shall have ten (10) days from the date hereof within which to file a supplemental brief if he is so advised, and appellee shall have twenty (20) days from the date hereof within which to file a brief in response to any brief theretofore filed by appellant.

A TRUE COPY

/s/ Emmett J. Comiskey

EMMETT J. COMISKEY
CLERK

cc: Geiger, O'Neal & Booth
Hugh S. Glickstein, Esq.
Hon. Clyde L. Heath, Clerk (70-6665)

Petitioner's Exhibit 16

[TITLE OMITTED]

JUNE 25, 1973.

ORDERED that appellee's motion to quash or dismiss appeal filed April 2, 1973 is hereby granted, and the above-styled case commenced by the filing of a Notice of Appeal on March 9, 1973 in the Circuit Court for Broward County, Florida, in Case No. 70-8665, is hereby dismissed.

A TRUE COPY

/s/ Emmett J. Comiskey

EMMETT J. COMISKEY
CLERK

cc:

Geiber O'Neal & Booth
Hugh S. Glyickstein, Esq.
Hon. Clyde L. Heath, Clerk (70-8665)

I, BEATRICE G. BROWNING, City Clerk of the City of Plantation, do hereby certify that the above and foregoing is a true and correct copy of a portion of the City of Plantation, Florida, Code of Ordinances, namely, Sections 6-34, 6-35, 6-36 and a portion of 6-37.

WITNESSETH my hand and the official seal of the City of Plantation, Florida, this 4th day of June, 1973.

/s/ Beatrice G. Browning

City Clerk

issued unless the applicant shall first procure from the appropriate city examining board a current certificate of competency and shall present a copy to the license division. (Ord. No. 151, § 10, 4-14-60)

Sec. 6-34. Examining boards; creation; powers and duties.

(A) Creation: The following six examining boards are hereby created:

(1) Repealed by Ord. No. 188, § 1, 8-30-61.

(2) Engineering contractors' examining board.

(3) Plumbing contractors' examining board.

(4) Electrical contractors' examining board.

(5) Mechanical contractors' examining board.

(6) Liquefied petroleum gas installation contractors' examining board.

(B) Appointment; qualifications: Each board shall consist of five (5) voting members appointed by the city council. The chief building inspector shall serve as secretary to all examining boards and shall have no vote. The chief building inspector shall be permitted to designate a staff member to serve in his stead. The members of each board shall be proportionately representative, as nearly as possible, of the trade or trades related to the subject matter concerned in the examination and qualifications,

and professions within and connected with the particular trades concerned shall be represented. No member of any examining board shall receive any compensation for duties involved:

(C) Terms of office; removal; vacancies:

(1) Terms of office for each of the examining boards shall be one (1) year for one (1) member, two (2) years for one (1) member, and three (3) years for three (3) members, with appointments thereafter to be for a three (3) year term. Each member shall hold office until his successor has been duly appointed and qualified.

(2) Any member of the examining boards may be removed from office by a majority vote of the complete city council.

(3) Any vacancy occuring during the unexpired term of office of any member of the examining boards shall be filled by the city council for the unexpired term within thirty (30) days after such vacancy occurs.

(D) Organization of boards:

(1) The chief building inspector shall serve as secretary of the examining boards. The chief building inspector shall be permitted to designate a staff member to serve in his stead.

(2) The boards shall elect a chairman and such other officers as may be necessary from among their members. Terms of all officers shall be for one (1) year beginning on November 1st with elections to be held at the first meeting in October of each year.

(E) Meetings:

(1) The board shall hold not less than four (4) regular meetings each fiscal year, one (1) in July, one (1) in October, one (1) in January, and one (1) in April.

(2) Meetings shall be called by the chairman of the board, and in his absence by the vice chairman of the board.

(3) All examinations and minutes of board meetings shall be public records, except those portions of which are of a confidential nature, such as credit reports, financial statements, and communications received by the board in respect to the applicants' qualifications. All minutes and records shall be kept in the office of the zoning and building department.

(4) Three members of the board shall constitute a quorum at any meeting, and a majority vote of those present shall be required to make any decision.

(F) Employees: For the purpose of administering this article any examining board may call on the building

division of the zoning and building department to furnish such employees as may be necessary to carry on or assist the board in performing its duties.

(G) Rules; oaths; witnesses: Each board may make such rules and regulations as are consistent with the general policies of this article as it may deem necessary to carry out the provisions of this article, including the power to administer oaths and subpoena witnesses in the manner provided for subpoenaing witnesses in the municipal court.

(H) Powers and duties. The contractors' examining board shall have the power to determine the qualifications of applicants for various types of contractors' licenses and certificates of competency; to hold hearings to determine if a license or certificate of competency of any contractor should be suspended for any incompetency of any contractor and to fix the length of time for such suspension or to revoke the license or certificate under the provisions of this article, or to appoint an employee from the building division to investigate any complaints made against the licensed contractor and determine whether it shall take administrative action against the contractor or direct the investigator to file a complaint for prosecution for the violation against the contractor; to call upon members of the industry to advise and assist them. Any board may prescribe different types of examinations for different kinds of contractors within each trade and issue limited certificates accordingly, and determine the type of certificate for which an applicant is qualified.

(1) The city council of the City of Plantation shall have jurisdiction over all matters pertaining to the quali-

fication and disciplinary action of any building contractor; a councilman so appointed by the mayor, together with the building inspector, shall determine if any applicant is qualified under this Code to be licensed as a building contractor, as defined herein. Any applicant who wishes to appeal any decision of the designated member of the city council and building inspector concerning his or her competence may make such appeal, in writing, to the city council, and the decision of the city council on such appeal shall be final. (Ord. No. 188, § 2, 8-30-61)

(2) Engineering contractors' examining board shall have jurisdiction over all matters pertaining to the examination, qualification, disciplinary action and certificate of competency of the engineering contractors and subcontractors in the engineering contractors' trade.

(3) Plumbing contractors' examining board shall have jurisdiction over all matters pertaining to the examination, qualification, disciplinary action and certificate of competency of plumbing contractors, gas fitting contractors, septic tank contractors, well drilling contractors, and subcontractors in these trades, and masters, journeymen and maintenance personnel in these trades.

(4) Electrical contractors' examining board shall have jurisdiction over all matters pertaining to the examination, qualification, disciplinary action and certificate of competency of electrical contractors, electrical sign contractors, and subcontractors in these trades, and masters, journeymen and maintenance personnel in these trades.

(5) Mechanical contractors' examining board shall have jurisdiction over all matters pertaining to boiler, refrigeration, air conditioning, heating and ventilating contractors, and subcontractors in these trades, and masters, journeymen and maintenance personnel in these trades.

(6) Liquefied petrolem gas installation contractors' board shall have jurisdiction over all matters pertaining to the examination, qualification, disciplinary action, and certificate of competency of the liquefied petroleum gas installation contractors, and subcontractors in this trade, and masters, journeymen and maintenance personnel in the trade, if, in the opinion of the board, the establishment of such personnel categories is necessary.

(7) The examiners' mediation board is hereby created, the membership of which shall be made up of the chairmen of the various examining boards created by this article with the building examining board member as the chairman. The chief building inspector shall serve as secretary and shall have no vote.

(a) The examiners' mediation board shall meet at the call of the chairman and shall make such rules and regulations, and keep such records as are consistent with the requirements and policies of this article. Three (3) members shall constitute a quorum, and decisions shall be by majority vote.

(b) The examiners' mediation board shall be empowered to decide questions arising which pertain or are applicable to more than one (1) of the examining boards created by this article, includ-

ing, but not limited to questions of jurisdiction as between the examining boards in carrying out their duties and questions of establishing uniformity and consistency in the rules, procedures and actions of these various examining boards. The rulings of the examiners' mediation board shall be final and shall be complied with by the examining boards concerned.

(c) Matters to be considered by the examiners' mediation board may be referred to it by any of the examining boards, or by the secretary of such boards, or the matter may be initiated by the examiners' mediation board.

(d) Disciplinary proceedings.

(1) The secretary of any contractors' examining board may, upon his own motion, or shall upon a sworn complaint in writing of any person investigate, or cause to be investigated by a special investigator appointed by the board, the charges against any contractor qualified hereunder and submit a written report to the appropriate contractors' examining board. Upon the filing of petition of bankruptcy by or against a qualified contractor under this article, or if a qualified contractor fails to keep in force the insurance policy required in section 6-87(b), the secretary of the board shall immediately suspend the certificate of competency and report the matter to the appropriate con-

tractors' examining board for revocation action.

(2) The contractors' examining board upon receipt of such report shall decide if the report makes a prima facie showing of a violation of this article and, if so, shall take one or both of the following actions:

a. Instruct the secretary to send, by registered mail, a letter to the qualified contractor to his last known address, as shown by the board's records, setting out the name of the complainant, the time of commission of the alleged offense, and the section of this article alleged to be violated, and notifying the qualified contractor to appear before the board at a time and place fixed, not sooner than twenty (20) days from the mailing of the registered letter, to show cause why his certificate of competency should not be suspended or revoked.

b. Instruct the investigator or complainant to file a sworn affidavit for the arrest of the qualified contractor if he has violated any of the provisions of this article.

(3) The administrative hearing provided for above shall be open to the public.

a. The proceedings at the hearing shall be recorded and may be transcribed at the

expense of the party requesting the transcript.

b. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the board finds it competent and reliable, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitous evidence shall be excluded.

c. Each party shall have these rights: To call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.

d. A decision shall be made by the contractors' examining board by a majority of

the entire board within five (5) days after the close of the hearing. The decision shall be one of the following:

1. Not guilty.

2. Suspension of certificate of competency, stating time.

3. Revocation of certificate of competency, naming effective date.

(e) An appeal from the decision of the board may be made by the contractor involved to the municipal court within twenty (20) days, but not thereafter. (Ord. No. 151, § 11, 4-14-60; Ord No. 188, §§ 1, 2, 8-30-61)

Sec. 6-35. Violations defined.

It shall be unlawful for any contractor, as defined by this article, operating anywhere within the county, licensed individually or as a firm contractor, officer, director or qualified representative of a firm contractor, to commit any one or more of the following acts or omissions:

(a) To contract or do any work outside of the scope of operation, as set out in the definition of the

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Amendment note—Ord. No. 188, § 1, repealed subsection (A)(1) of § 6-34, which created a building contractors' examining board. Section 2 of said Ord. No. 188 amended § 6-34(H)(1) to read as set out. Formerly said paragraph pertained to the jurisdiction of the building contractors' examining board.

particular type of contractor for which he is qualified.

(b) Abandon without legal excuse a construction project or operation in which he is engaged or under contract as a contractor.

(c) Divert funds or property received for the execution or completion of a specific construction project or operation, or for a specified purpose to any other use whatsoever.

(d) To depart from or disregard in any material respect the plans or specifications of a construction job without the consent of the owner or his duly authorized representative.

(e) Disregard or violate, in the performance of his contracting business, any of the building, safety, health insurance or Workmen's Compensation Laws of the State of Florida or ordinances of this city.

(f) Misrepresent any material fact in his application and supporting papers in obtaining a license under this article.

(g) Fail to fulfill his contractual obligation through inability to pay all creditors for material furnished or work or services performed in the operation of his business for which he is licensed hereunder.

(h) Aid or abet an unlicensed person to evade the provisions of this article or allow his license to be used by an unlicensed person or to act as an agent, partner, or associate of an unlicensed person with the intent to evade the provisions of this article.

(i) Do any fraudulent act as a contractor by which another is substantially injured. (Ord. No. 151, § 13, 4-14-60)

Sec. 6-36. Suspension or revocation of certificate.

The certificate of competency issued by the city to a contractor may be suspended for a fixed term or revoked by the appropriate contractors' examining board's determination only by a majority vote of the entire board, after hearing, if the contractor as an individual or the firm by its officers, directors, or qualified representatives has violated any of the provisions of this article. (Ord. No. 151, § 12, 4-14-60)

Sec. 6-37. Same—Grounds for; insurance; reinstatement.

The appropriate contractors' examining board shall suspend or revoke a contractor's certificate of competency if, after hearing, it is found that the contractor:

(a) Has been adjudicated bankrupt.

(b) Fails to maintain at all times with an insurance company authorized to do business in the State of Florida the limits of insurance required by any other applicable law or authority having

jurisdiction, but not less than bodily injury liability insurance with the minimum limits of fifty thousand dollars ($50,000.00) for one (1) person and one hundred thousand dollars ($100,000.00) for more than one (1) person in any one (1) accident, and property damage insurance with a minimum limit of not less than five thousand dollars ($5,000.00) for any one (1) accident, including any damage to public rights-of-way or shrubbery, and to file certificates, signed by the qualified agent of the insurer, with the secretary of the appropriate contractors' examining board showing the type of policy issued, the policy number, the name of the insurer, the effective date of

APPENDIX E

EXCERPTS FROM TESTIMONY OF WITNESS C. DOUGLAS RICE

(Mr. Glickstein, Counsel for Respondent; and Mr. Geiger, Counsel for Petitioner)

[256] MR. GLICKSTEIN: I will call Mr. Rice.

Thereupon:

DOUGLAS RICE

was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GLICKSTEIN:

Q State your name, please, sir.
A Douglas Rice.

Q And your residence address?
A 7420 Southwest 5th Street, Plantation.

Q What is your present occupation?
A Chief building inspector, City of Plantation.

Q Were you so employed on or about May 7, 1968?
A Yes, sir.

Q On or about that date did you have a conversation with Lester and Robert Mansbridge with [257] respect to subcontracting work they were doing for George Donaldson, Jr.?
A Yes, sir.

Q Would you advise the Council what was said by them with respect to that subject?
A Around May 4th or 5th Lester and Robert Mansbridge came into the City Hall.

MR. GEIGER: I am going to object to what appears to be the procedure to let the witness just sit there and sort of ramble and tell a story. I think it is incumbent upon counsel to ask questions and conduct a proper examination.

MR. FREEMAN: Overruled. Any relevant evidence shall be admitted.

MR. GEIGER: I take it my exception is noted for the record?

MR. FREEMAN: The clerk will note the exception.

MR. GLICKSTEIN: You can answer the question.

A On or about the 4th or 5th of May of 1968, Robert and Lester Mansbridge came in the City Hall, made inquiry about the methods of obtaining a carpenter subcontractor's license and they had [258] discussed this matter with Mrs. Hubert for a few monents and she came to my office and asked me to come out to the counter and talk to them about any problems they may have in applying for a certificate of competency.

In the ensuing conversation, Lester Manbridge said that he had a certificate of competency from Broward County. When I asked what type of a competency card he had, he said general contractor.

Since the City of Plantation charges the same amount of money for carpentry subcontractor as they do for a general contractor and since he allegedly said that he had obtained this card from Broward County, I asked him then, "Why don't you apply for a general contractor's license because you can get this for the same amount of money and then if you wish to do contracting work in the city you do not have to reapply for another certificate of competency in a license and it will save you sixty dollars."

I said, "Be sure now, did you receive the certificate of competency by examination?" And they said, "Yes, there is no question about that."

"Well, why don't you make out the application [259] in this form? This is as much as I can do at that moment because from then on all the forms have to be made out and have to be submitted to the city and eventually Mrs. Hubert will submit to me a complete application form for my approval."

Eventually this complete application form was submitted to me on or about August 1st or 2nd and I checked the application over and determined that in my opinion they should be granted a certificate of occupancy for the city, based on the material that they had furnished.

I approved the application and gave it to Mrs. Hubert in the License Department.

I do not issue licenses, the Building Department does not. The License Department does that, but I approved it first, so I gave it to Mrs. Hubert. I cannot speak of firsthand knowledge of everything that went on past that point, except that I did not recognize the number that they gave on their Broward County certificate as a Grandfather Clause number.

I assume that I passed over an investigation of the number because they had told me previously that it had been obtained by examination and so it did not ring a bell with me.

[260] Eventually this application was submitted, I am told, to Mr. Campbell and Mr. Campbell alertedly recognized the fact that this was not a number that would be granted by examination and he disapproved it as far as the License Department is concerned and brought it to my attention.

I called Virginia Massaro at Broward County on the phone and asked her to check the records to determine whether or not a certificate of competency had been obtained by examination and she informed me over the phone that it had not been, that he had been issued a license by the Grandfather Clause.

I asked Mrs. Massaro to please send me confirmation of that by mail, which she did. We eventually got it two or three or four days later, whatever it happened to be.

When I hung up the telephone I took the application and I crossed out my name as having approved it, previously. I wrote no, this is obtained by the Grandfather Clause and took it back and gave to Mrs. Hubert.

Q Mr. Rice, in May, 1967, what if anything did Messrs. Mansbridge tell you with respect to any subcontracting work they were doing for George [261] Donaldson, Jr., in the City of Plantation?

A This is the reason they came in, because they said they were doing subcontracting work for George Donaldson and they didn't have a license and they had been informed they needed a license and they came in to make application for it.

Q Did they indicate they were doing the same in the City of Plantation?

A Yes, sir.

MR. GLICKSTEIN: No further questions.

CROSS-EXAMINATION

BY MR. GEIGER:

Q Mr. Rice, with reference to the Grandfather Clause, you used the term, what is mean by the Grandfather Clause?

A Well, I do not wish to interpret Broward County's idea of what they call the Grandfather Clause, but generally speaking if an ordinance is enacted as of a certain date and men are employed in a certain, we will say as a general contractor and the conditions of licensing change, it does not affect them. They are continued through a period of time, so long as they make proper application.

Q So long as they keep getting the [262] license?

A That is correct, yes.

Q Let's go back to a man who had been issued a license, a certificate of competency before this cutoff period. They don't just pass them out even in the old days, do they? Wasn't there something you had to do to qualify to get a license, an oral examination or maybe appear before a board of two or three of your peers in a similar industry and have them ask you questions about carpentry?

A I have no idea what they did in Broward at that time.

Q You are the chief of the Building Department and you are supposed to, as I understand, know something about these matters. Don't you have any knowledge about the practice of Grandfather Clauses?

A We don't conduct any examinations here at all.

Q Sir, you haven't answered my question. Let me see if I can rephrase it for you.

Why is it that a Grandfather Clause license is any different than a written examination license?

A Why is it?

Q Yes, sir.

[263] A I assume that the law says so. You would know better, perhaps, than I would about that.

Q What is the factual basis for it?

A I am not an attorney. I don't know. I know we have a law which—

MR. GEIGER: Mr. President, I am going to request that the witness be instructed to answer the question.

MR. GLICKSTEIN: He said he doesn't know.

MR. GEIGER: I object to counsel testifying on behalf of Mr. Rice. I don't think any question was asked—

MR. GLICKSTEIN: The witness said, "I don't know." He answered the question, so counsel's remarks are without any basis.

MR. GEIGER: I think the witness is obviously being argumentative with me, talking about he is not a lawyer and that is what the law is.

THE WITNESS: No intention of being that.

MR. FREEMAN: The witness will answer the question.

[264] THE WITNESS: Please rephrase the question.

BY MR. GEIGER:

Q What is meant by a Grandfather's Clause?
A The continuation of a license with no regard to a new criteria or new legal requirements

Q What is the procedure for taking an examination?
A Where?

Q Anywhere, your city? You don't have examinations?
A No, we don't give examinations.

Q What is the procedure for taking an examination?
A You make application for it, pay a fee and take an examination.

Q What types of examinations are given?
A Well, I suppose many kinds, doctors, lawyers, engineers.

Q Does the City of Plantation reciprocate with other areas beside the Broward County Building Department?

A We don't reciprocate with anybody.

[265] Q I understand you recognize their license, a written examination?

A Yes, we use them as our examining agency, but it is not a matter of reciprocity. Reciprocity in my opinion means that it is a two way street. We—

Q Do you recognize other people's examinations?

A Yes, we do.

Q Do you recognize Broward County's Building Department?

A Yes.

Q Do you represent anyone else written—how about, does Wilton Manor have the same policy you do?

A We recognize Dade County, Fort Lauderdale.

Q Hollywood?

A Hollywood.

Q Pompano?

A And Broward County.

Q Does Pompano give examinations?

A I don't think they do any more.

Q Did you recognize their examinations when they gave it?

[266] A Well, I wasn't here then.

Q You are testifying to me, Mr. Rice, under oath, that Pompano doesn't give written examinations?

A I can't say that. I said I don't believe they give them.

Q As a matter of fact, you used to be the chief building inspector of Pompano?

A Yes, sir.

MR. GLICKSTEIN: I object. We are so far afield of what is asked here. I object. The scope of inquiry is limited to one particular question, to these particular individuals at a particular time, a particular conversation.

MR. FREEMAN: The chair will order the room cleared if there is any further outbursts. Please allow the attorneys to conduct this trial.

MR. GEIGER: May I proceed, sir?

MR. FREEMAN: The objection of the last question is sustained and counsel is directed not to go too far afield.

MR. GEIGER: Is Pompano Beach too far afield?

[267] MR. GLICKSTEIN: If it please the Court, if counsel is going to be sarcastic to the President of the Council—

MR. GEIGER: I would like for the record to reflect my objection to the fact that when direct examination was in course, the code was constantly

read to me and reflected about the broadness and latitude in the course of these type of administrative proceedings and now on cross-examination when there should be some latitude allowed for cross-examination, certain strictness is employed that has not been employed before.

BY MR. GEIGER:

Q Mr. Rice, you are the authority in the City of Plantation, so far as the examinations are concerned. Do you rule on whether or not there has been an examination somewhere else?

A Yes, sir.

Q What is your background, sir, so far as your job, your responsibilities?

MR. GLICKSTEIN: I object to any questions. The witness has not been called as an expert.

[268] If it please the President, the witness has been called to testify as to one fact involving two applicants for a certificate or license to do business and what conversation took place with respect to this witness and those applicants as to the subcontracting work they were allegedly doing. He is not being called as an expert. He hasn't testified that he has done anything as an expert.

Mrs. Hubert has indicated as being the person who wrote the letters to the Mansbridges rescinding the license, sending their money back to them.

MR. GEIGER: Mr. Rice has testified he had the conversations with these men, that he made the valued judgments, Mrs. Hubert's testimony was she acted based upon the information from Mr. Rice.

MR. GLICKSTEIN: If it please the Council, there is no value judgment here. It is an attempt to stretch something into something totally beyond the scope of any direct testimony for which this witness was brought to the stand.

[269] MR. FREEMAN: Prosecution's objection is sustained.

BY MR. GEIGER:

Q Now, Mr. Rice, I believe there was prior testimony in this room with reference to all of these gentlemen who testified earlier, Ruggiero, Mr. Scevola and all these gentlemen, that they were just the men that went out in the field and you were the boss. Is that correct, you are the chief inspector?

A Yes, I am the chief inspector.

Q So in effect you would be—they would be acting under your orders, your instructions and your policy?

A Yes, sir.

Q So, in effect, although a comment has been made about your expertize; you are testifying as an expert, aren't you, because you are the head of the Building Department?

MR. GLICKSTEIN: If it please the Council, this is the third time that counsel is trying to do the same

thing and the previous objections have been sustained. Yet counsel persists in going about it the same way. The City objects [270] again.

MR. FREEMAN: Mr. Geiger, if you wish to call Mr. Rice as a witness on your case, while you will be able to go into that aspect of it. The objection is sustained.

BY MR. GEIGER:

Q Mr. Rice, have you ever made any personal derogatory statements about Mr. Donaldson?

MR. GLICKSTEIN: If it please the Council, the City objects again upon the grounds of materiality and relevancy. The witness was called for one particular statement that was made to this particular witness and he so testified to it and that is the subject of the direct examination.

MR. GEIGER: If it please the Court, nothing could be more material to cross-examination in the interest of the possible bias of a particular witness against the person or the firm that is in issue here and if there is any other basis for—

MR. FREEMAN: Objection will be overruled and he can answer the question.

Q So, Mr. Rice, have you ever had any [271] words or made any statements about Mr. Donaldson?

A Not to my knowledge. Not to my recollection.

Q Do yon know Mr. Fred Daul?
A I think he has bought a house from Mr. Donaldson.

Q Isn't he one of the purchasers of Mr. Donaldson's homes?
A I believe so.

Q Do you remember having any conversations with Mr. Daul?
A No, I don't recall conversations. I know that I talked to him, but I don't recall what specifically was said other than the fact he was in trouble.

Q That who was in trouble?
A Mr. Daul was in trouble.

Q What was Mr. Daul's trouble?

MR. GLICKSTEIN: I object. We are so far afield.

MR. FREEMAN: Objection overruled. Let him proceed.

MR. GEIGER: Read back the question.
[Thereupon the pending question was read by the reporter as recorded [272] above.]

Q What was the problem?
A He is trying to get moved into his home.

Q Did he come to your office?
A Yes.

Q Did you have any conversation with him?
A I believe so.

Q Have you ever known Mr. Daul before?
A No.

Q No real contact with him since?
A No.

Q Do you know if he has any relationship with Mr. Donaldson other than the fact he just bought a house from him?
A Have no knowledge.

Q No knowledge whatsoever.
A No, sir.

Q Do you remember ever making the statement to Mr. Daul in words or to the effect that, "I finally have George where I want him"?
A Good heavens, no.

Q You never remember making any statement like that?
[273] A No.

Q How about Mr. Ollie Thornton, do you know Mr. Ollie Thornton?
A Yes.

Q Who is Mr. Ollie Thornton?
A He has a pool company.

Q He is just a poolman, right?
A Well, he owns his own company, I believe.

Q Do you remember calling a Mr. Thornton during the period of time that you had a conversation with Mr. Daul?
A I know I had a conversation with Mr. Thornton.

Q Do you remember making any comment to Mr. Thornton in words or to the effect that, "I finally have George where I want him"?
A No.

Q You don't remember making that statement to either one of them?
A No.

Q Do you ever remember making the statement to Mr. Daul at or about the same time of the same conversation in addition to the comment I just made to you in words or effect that, "I am [274] going to get the police to go out and arrest George right now"?
A No.

Q You don't remember that?
A No.

Q Do you remember making derogatory statements about Mr. Donaldson to Mr. Daul?
A No.

Q Do you ever remember making statements that Mr. Daul better go hire himself a lawyer if he wants to get his house?

A It is a possibility that with Mr. Daul telling me the story that he told me about the pool that I suggested he get an attorney.

Q Do you ever remember telling him that you hoped that he has got a lot of money?

A No.

Q Do you ever remember telling him that there are liens all over his house?

A I have no knowledge that there were any liens on the house.

Q So if you made any statements to him about the liens, about any liens on his house, they would be statements you had no basis to make. Is that correct?

[275] A If I had made the statements.

Q If you made the statements. Do you ever remember telling Mr. Daul or anyone else that Mr. Donaldson was in serious financial trouble?

A I don't recall making that statement.

MR. GEIGER: Can we have a short recess?

MR. FREEMAN: With pleasure.

[Thereupon a short recess was taken after which the following proceedings were had:]

BY MR. GEIGER:

Q Just a couple more questions, Mr. Rice. Are you an engineer, sir?

A Yes, sir.

Q Sir, is it true that your engineering license is under the Grandfather's Clause also?

A No, sir.

Q Isn't it true, sir, that your engineering license is from the State of Massachusetts and New Hampshire?

A Yes, sir.

Q And isn't it true you did not take a written examination up there?

A Yes, sir.

[276] Q You did not take a written exam?

A That's right.

Q I understand you to say that the reason Mr. Mansbridge, this carpenter, was not allowed to operate in the City of Plantation was because he didn't have a written examination?

A That is what our law requires.

Q And you are the chief building inspector and engineer who has not had a written examination, but you are allowed to operate. Is that correct?

MR. GLICKSTEIN: Operate what?

MR. GEIGER: The functions of a chief building inspector as an engineer.

MR. GLICKSTEIN: I will object.

BY MR. GEIGER:

Q Let me ask you this, sir. You say you are an engineer, but you don't have an engineering degree, do you?
A No, sir.

Q Actually your degree is in economics, isn't it?
A Yes, sir.

Q Your job here as a building inspector you have sent out letters over your letterhead as an [277] engineer, haven't you?

MR. GLICKSTEIN: May it please the Council, I object on the grounds of materiality, number one and number two, it has nothing to do with what this witness was called for.

MR. GEIGER: I think it questions his whole credibility as chief building inspector for the City of Plantation and as an engineer.

MR. GLICKSTEIN: It is so far fetched.

MR. FREEMAN: Objection sustained. The question is irrelevant at this point.

MR. GEIGER: No further questions.

* * *

[937] Thereupon the following proceedings were had:

MR. FREEMAN: This hearing is now in order. You may call your next witness.

MR. GEIGER: I will call Mr. Rice to the stand as an adverse witness, please.

MR. GLICKSTEIN: I will object to any such procedure as calling Mr. Rice as an adverse witness. I don't think there is any such procedure for that.

MR. FREEMAN: It is the pleasure of the Council. We are not operating under the rule. The pleasure of the Council.

MR. GLICKSTEIN: The City objects to such an attempted use of Mr. Rice as an adverse witness, Mr. President.

MR. FREEMAN: Objection sustained.

APPENDIX F

SUPREME COURT OF THE UNITED STATES

No. A-967

GEORGE P. DONALDSON, JR.,
Petitioner

V.

CITY COUNCIL, CITY OF PLANTATION, FLORIDA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 9, 1974.

Associate Justice of the Supreme Court of the United States

Dated this 10th day of April, 1974

APPENDIX G

EXCERPTS OF PROCEEDINGS REFLECTING OBJECTIONS AND RULINGS

(Mr. Glickstein, Counsel for Respondent, and Mr. Geiger, Counsel for Petitioner)

[30] BY MR. GLICKSTEIN:

Q What other violations, if any, did you observe as to these particular premises?

A Well, that particular one at a later date we had a request for a tie beam inspection and at that time I believe a problem came up with a setback violation on the west side of the property. Survey was submitted that showed—I don't remember the exact inches or feet, but it did show a violation as far as the setback was concerned and I think in that particular case I believe—if I recall correctly we had a surveyor double check the setback of the building on the west side.

Q What was the result?

A Well, it was resolved, I believe, that it was all right. It was the fault of the surveyor that had made the first one, I believe.

Q Now, anything else with respect to this particular house?

MR. GEIGER: For clarification, was the alleged violation under your testimony the fault of the surveyor?

THE WITNESS: Well, no.

[31] MR. GLICKSTEIN: I will object to that. The question is whether or not there was a violation. The permit is issued in the name of the general contractor, not the name of the surveyor. If it was a mistake the surveyor under the direction of the general contractor —that is something for cross-examination. He can bring this out on cross.

MR. GEIGER: I am going to object to any reference to a violation of the code where it is obvious from your own witness' testimony that the violation of the code, if it occurred, was a violation of somebody else's license. I don't think the fact that a general contractor is building the house makes him an insurer of all the work of all the other professional tradesmen.

MR. FREEMAN: That can be established on cross-examination.

* * *

[67] Q Did you ever see Mr. Donaldson on any of these construction jobs?

A I think I saw him once and occasionally when I rode by in the office. That's all. Not on the site. One time, I believe.

Q What about his superintendent, who was that, Mr. Birch?

A Yes, Mr. Birch.

Q Can you give the Council an estimate or percentage of the times that he was, that you actually saw him engaged in actual supervision?

MR. GEIGER: I object to him guessing.

MR. FREEMAN: Overruled. You can establish that on cross-examination.

MR. GLICKSTEIN: You can answer the question.

* * *

[90] MR. GEIGER: I would request that when I make an objection that a specific ruling be made, in other words, that it is [[91] sustained or overruled.

MR. LINUS: What we have been doing is noting your objection and we get it in for what it is worth and we do not really exclude either side from getting the testimony they want, whether on cross-examination or direct examination. It is based on this administrative hearing procedure rules.

For the purpose of preserving the record by noting your objection for any appellate case, your objection would be preserved but I don't know of any administrative case where they go to the weight of the evidence. They go to the sufficiency, the support of the charge. But, to my knowledge your objections are in the record and you are not giving up any valid objection by us noting them, if that is what you are worried about.

MR. GEIGER: I wanted to have that clarified in my own mind.

MR. LINUS: By noting your objection we are not trying to put you in a position where your objection,

if it is a good objection, [92] would not be proper for any future appellate review.

MR. GEIGER: For all practical purposes, it is simply being overruled for the purpose of this hearing and you are using the term noted?

MR. LINUS: That is right.

* * *

[105] BY MR. GLICKSTEIN:

Q Did you issue any other pink slips as a result of your inspection?

A I have three on the same date.

Q What is the date, sir?

A 11-13-68.

Q What were the violations you observed on that day?

A These were three sewer inspections I was called on.

Q Three separate?

A Three separate homes. Do you want the description of each one of them?

MR. GEIGER: I make the same objection on this. We are here up to November the 16th, a full 30 days after the date on or about which we are charged with in this Complaint.

[106] MR. FREEMAN: You will probably have a technical point in a point of law, which would stand

up. But in this case due to the nature of the hearing we overrule it and allow it to stand for its evidence.

* * *

[196] A I made quite a few inspections for Mr. Donaldson and I can't pinpoint them to each individual house.

Q Can you pinpoint them as to the specific block?
A Well, I made inspections on all.

Q All four blocks?
A All four blocks, but most of the violations was was in placing steel or caved in foundations before they poured.

MR. GEIGER: I am going to move that the answer be stricken on the grounds that it is repetition of the same objection. The same question that was objected to awhile ago and I believe a ruling was made on it and on the grounds it is just not proper direct for the witness to be able to generalize.

MR. GLICKSTEIN: If it please the Council, if the witness has a personal recollection for which there was no pink slip but there is a violation and he is able to testify about his personal recollection, even though he may not recollect a specific house, it is material in this [197] administrative hearing.

MR. GEIGER: I would like to make one comment with reference to counsel's statement. I think what we are talking about goes to the very heart of any kind of proceeding, whether it be judicial or quasi-judicial and I think due process requires the case to

be processed in such a manner that the people know what the people are charged with and have the ability to defend themselves and I think this is the thrust of the objection.

MR. FREEMAN: The question is pertinent.

MR. GLICKSTEIN: You can answer the question.

MR. GEIGER: The objection is overruled, for the record?

MR. FREEMAN: For the record, right.

* * *

[237] Q Now, did you later determine that the particular applicant had not any Broward County certificate of competency pursuant to examination?

MR. GEIGER: I am going to object to the form of the question because I think it necessarily calls for testimony that this witness would not know of her own knowledge inasmuch as her own testimony shows if they work with Plantation and not the Broward County office.

MR. FREEMAN: Section 6-34, overruled.

MR. GEIGER: I beg your pardon?

MR. FREEMAN: Under Section 6.34, it is overruled.

MR. GEIGER: Is that the Section talking generally, Council, about the [238] hearsay exception?

MR. FREEMAN: Right.

MR. GLICKSTEIN: You can answer the question.

MR. GEIGER: I am not quite through, if you don't mind. Section 6-34 on page 313 of the code, I believe the statement refers to the technical rulings and the technical procedures for these hearings, is that hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible in several actions.

I would submit to the presiding officer and to the Council in general that if this is not direct evidence on the question of whether or not somebody else, Broward County to wit, has some records and what those records would reflect as a matter of direct evidence, I can't imagine. It is obvious the lady has not testified to her own knowledge and nobody else has as to this information and it would not be [239] supplemental or explaining any direct evidence.

MR. FREEMAN: Your objection will be noted and considered for what it's worth.

BY MR. GLICKSTEIN:

Q All right, ma'am.
A Will you repeat the question, please?

Q Did you make a determination as to whether the applicants had in fact obtained a certificate of competency by examination?

A No, because that is not my function. My function is just to accept the application and submit it for approval.

Q All right, ma'am. Was information received by you from Broward County with respect to the certificate of competency that the applicant claimed to have?

A Yes, it was made part of the—

MR. GEIGER: Would you read the question back?

[Thereupon the pending question was read by the reporter as recorded above.]

MR. GEIGER: I would like to note the same objection that I had made before [240] with reference to any information she would have received from anybody else which she admittedly does not have the knowledge of herself from her own knowledge.

MR. FREEMAN: It is direct testimony as to what she was informed, sir. It is not hearsay from someone else. It is direct testimony of what she was informed, what action she took.

MR. GEIGER: Do I understand then that your understanding is this would not be hearsay, she being advised about it from somebody else?

MR. FREEMAN: She is testifying to the action she took and the answers she received.

MR. GEIGER: Is she testifying as to the truth and veracity of those?

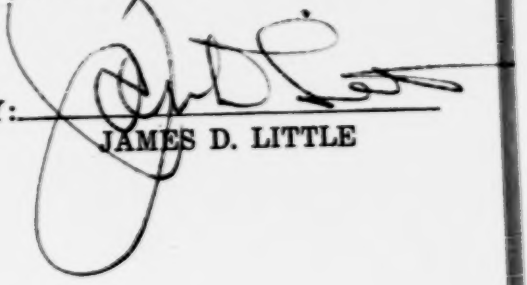
MR. FREEMAN: No, sir, she is not representing it to be the truth and veracity, the truth of what she found as a result of her investigation.

MR. GEIGER: Is my objection noted for the record?

MR. FREEMAN: Yes.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of Florida was delivered by mail to HUGH S. GLICKSTEIN, Attorney for City Council, City of Plantation, Florida, Respondent, 2138 Hollywood Boulevard, Hollywood, Florida, this 7 day of May, 1974.



BY: _____
JAMES D. LITTLE